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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
THE NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, INC.,
DRUG AND TOILET PREPARATION TRAFFIC CONFERENCE,
v. *Appellants,*
UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
and *Appellees,*
ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., ET AL,
Intervenor-Appellees.

On Appeal From the United States District Court for the District of Columbia

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court is reported at 287 F. Supp. 129 and is reprinted here in Appendix A. The relevent orders of the Board of Suspension of the Interstate Commerce Commission are unreported and are reproduced in Appendices B and C.

JURISDICTION

These suits were originally brought under 28 U.S.C. §§ 1336, 1398, 2284 and 2312-2325 to obtain mandatory injunctive relief relating to enforcement of orders entered by the Interstate Commerce Commission suspending the operation of general rate increase schedules published in two motor carrier territories. The three-judge district court entered judgment on July 22, 1968, dismissing the complaint in each of the two cases. Notice of appeal was filed in that court on September 20, 1968. Jurisdiction of the Supreme Court to review the judgment of the district court on direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b). *Southern Ry. Co.* v. *State of North Carolina,* 376 U.S. 93; *American Trucking Associations* v. *United States,* 364 U.S. 1.

STATUTES INVOLVED

Section 216(g) of the Interstate Commerce Act (49 U.S.C. § 316(g)), in relevant part, provides:

> Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate . . . the Commission is hereby authorized and empowered . . . to enter upon a hearing concerning the lawfulness of such rates . . . and pending such hearing and the decision thereon the Commission . . . may from time to time suspend the operation of such schedule and defer the use of such rate, . . . but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate . . . goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective.

Section 1336 of the Judicial Code (28 U.S.C. § 1336) provides:

> Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission.

Texts of the pertinent rules of the Special Rules of Practice of the Interstate Commerce Commission (Rule 200) and of the Commission's organization minutes (Sections 7.1, 7.3, 7.9) are set forth in Appendices E and F.

QUESTIONS PRESENTED

Under the statute which empowers the Interstate Commerce Commission to investigate and suspend the operation of a schedule stating a new rate, the Commission by its Board of Suspension entered an order suspending general rate increases. The carriers, without invoking the review procedure established by the Commission's Rules of Practice, announced that they chose not to defend the suspended schedules and cancelled them. Upon cancellation of the suspended schedules the investigation was discontinued. The order of suspension which deferred use of the rates for seven months was not vacated or modified. Immediately on cancelling the suspended rates, the carriers republished the identical rates in new schedules. The Commission accepted the newly-published schedules for filing, refused to entertain petitions to reject and strike such schedules from its files, and permitted the rates therein contained to become effective over protest. The appeal presents these questions:

1. Should the suspension provisions of 49 U.S.C. § 316(g) be construed as speaking only to the

schedules in which rates are published or to the *rates* themselves; and if the latter, are carriers who elect not to defend suspended rates and who cancel them, precluded from republishing the identical rates whose use was ordered deferred by the unrevoked suspension order?

2. Does an order discontinuing a proceeding entered by an Employee Board of the Commission terminate an order of suspension deferring the use of rates?

3. Is *enforcement* of an order of suspension entered under 49 U.S.C. § 316(g), as distinguished from *issuance* of an order of suspension, a matter committed to the discretion of the Commission and not subject to review by the three-judge court?

4. May the Commission, in disregard of the terms of its order of suspension and of its own Rules of Practice prescribing the procedure and time limits for review of a suspension order, accept and retain in its files, schedules that republish the suspended rates; or, is such action arbitrary, capricious, not in accordance with law and a failure to observe the procedure required by law?

5. May parties aggrieved by the Commission's action obtain mandatory injunctive relief based on enforcement of the terms of the outstanding suspension order or are they required to suffer rates effected in contravention of the suspension order while exhausting remedies under alternative formal complaint procedure?

STATEMENT

Appellants are three nationally-organized leagues representing many shippers and receivers of freight in the involved motor carrier territories. Two complaints filed with the three-judge court were consolidated for hearing and determination. They stem from these events: In June 1967 Rocky Mountain Motor Tariff Bureau, Inc. and Pacific Inland Tariff Bureau, Inc. filed general rate increases on behalf of motor carriers operating in the respective territories. They were met by shipper protests. The Commission's Board of Suspension issued an order of investigation and suspension on July 12, 1967 that deferred use of the rates to February 14, 1968 (Appendix B).

At this juncture the carriers had these courses open to them: (1) appeal within 20 days as provided in Rule 200 of the Commission's Special Rules of Practice (Appendix E) by filing a petition to vacate the order of suspension; (2) defend the suspended rates in the investigation proceeding; (3) elect not to defend by cancelling the suspended rates under a standing order of the Commission authorizing carriers to cancel matter under suspension on 10 days notice. (Appendix G). By letter dated July 19, 1968 the Pacific Bureau announced to Commission and protestants:

> "please be advised that member carriers do not choose to defend the general increases under suspension by order of the Commission."

On the same day, they issued a supplement to cancel the suspended rates. Rocky Mountain did not write a similar letter but did on July 20, 1967 issue a supplement to cancel the rates under suspension in their ter-

ritory. The following events then took place (outlined in the subtended chronology):

CHRONOLOGY

Civil Action No. 2358 - 67

ROCKY MOUNTAIN MOTOR TARIFF BUREAU

Original Publication of Increased Rates	Issued	6/10/67	Effective	7/15/67
Date of Suspension Order I&S M-21610	Dated	7/12/67	Served	7/14/67
Expiration of Suspension Period	——	——	Through	2/14/68
Cancellation Supplement	Issued	7/20/67	Effective	8/4/67
Republication of Increased Rates	Issued	7/27/67	Effective	8/29/67
Order of Discontinuance by Suspension Board	Issued	8/16/67	Served	8/22/67

Civil Action No. 3218 - 67

PACIFIC INLAND TARIFF BUREAU

Original Publication of Increased Rates	Issued	6/9/67	Effective	7/15/67
Date of Suspension Order I&S M-21611	Dated	7/12/67	Served	7/13/67
Expiration of Suspension Period	——	——	Through	2/14/67
Carriers' Letter of Election "not to defend"	Dated	7/19/67	——	——
Cancellation Supplements	Issued	7/19/67	Effective	8/3/67
Republication of Increased Rates	Issued	8/7/67	Effective	9/9/67
Order of Discontinuance by Suspension Board	Issued	8/16/67	Served	8/22/67

Eight days before the cancellation became effective in Pacific Inland territory and four days after it became effective in Rocky Mountain territory, the respective Bureaus issued fresh schedules containing rates that were identical with those placed under suspension by the order of July 12, 1967. The carriers had not petitioned to vacate the suspension order; nor was it revoked or modified in any way by the Commission. Indeed, the standing special permission order under which the carriers had implemented their election not to defend the rates by publishing cancellation supplements, stipulated that the permission granted does not waive or modify any outstanding formal order of the Commission or any provision of the Interstate Commerce Act. (Appendix G, paragraph 8)

There was thus outstanding and in force on the dates the carriers published these new schedules, a Commission order that, in the words of the statute, suspended the operation of the schedules and deferred the use of the rates (49 U.S.C. § 316(g)). Nine days after Pacific Inland published these new schedules and twenty days after publication in Rocky Mountain territory, the Commission's Board of Suspension issued an order discontinuing the investigation. This order was authorized by the Commission's Organization Minutes (Appendix F) which did not however delegate to the Board authority to vacate an order of suspension. Only Division 2 or the entire Commission could vacate the suspension order and they never did.

Protestants raised timely objection to the newly-published schedules. The Commission accepted the schedules for filing, refused to entertain petitions to reject and strike the schedules from its files, and permitted the rates therein contained to become effective

over protest. These suits were then instituted before the three-judge court to obtain mandatory injunctive relief by enforcement of the Commission's order of suspension.

The district court dismissed the complaints in the two cases. It viewed the suspension order of July 12, 1967 as rendered nugatory by the order of the Board of Suspension discontinuing the investigation proceeding, although that order was entered August 16, 1967, *after* the carriers issued the new schedules containing the suspended rates. Directing its discussion chiefly to the Commission's subsequent action in declining to suspend the republished rates, it held that such action was committed to the Commission's exclusive discretion and was not judicially reviewable; that plaintiffs could not invoke the court's review jurisdiction until they had exhausted remedies before the Commission in a formal complaint proceeding.

THE QUESTIONS ARE SUBSTANTIAL

In the regulation of rates, few remedial measures have been invoked as frequently or tested as assiduously as the Investigation and Suspension provisions introduced into the statute in 1910. Yet the pivotal phrase—"suspend the operation of such schedules and defer the use of such rate"—has not previously come before the courts for interpretation. The problem now arises in the context of a congeries of rate-actions that evoke the question whether it is to the schedules in which rates are published that the suspension order speaks, or to the rates themselves. The meaning imparted to the suspension order by both Commission and district court leaves the carrier free, in the face

of an unrevoked order suspending the operation of the schedule and deferring the use of the rate, to scrap the schedule by cancellation and blandly republish the identical rate. This is a result plainly at odds with the Congressional purpose, reflected in the legislative antecedents of Section 316(g), to shield the public from exactions of rates and charges that are, when published, attended by symptoms of unlawfulness sufficiently pronounced to call forth an order of suspension.

The district court, unwilling to accept the view that the suspension order was "outstanding," points to an order of discontinuance of the proceeding issued by a board of Commission employees. But the irreducible facts are these: revocation of a suspension order is an appellate function vested in a division of Commissioners (Rule 200, Appendix E) or is a power reserved by the Commission and never delegated to the board of employees. (Organization Minutes, Appendix F) The order of discontinuance, issued after the carriers announced their election not to defend the suspended rates and after cancellation of the rates, served to terminate the investigation and dispense with a hearing. It did not, and could not, reach the independently stated paragraph of the order of July 12, 1967 that suspended operation of the schedule (i.e. deferred the use of the rates) to and including February 14, 1968. (Appendix B). Termination of the investigation coupled with continuation of the suspension are results perfectly compatible with each other and entirely in harmony with the regulatory purpose. With defense of the rates abandoned by the carrier, no purpose would be served by further investigation and a hearing. Accordingly, on cancellation of the schedules by the carriers, the investigation may be routinely ordered

discontinued by the employee board. On the other hand, the suspension order recites:

> "upon consideration of the said schedules and protests thereto, there is reason to believe that they would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable in violation of the Interstate Commerce Act . . ."

In the presence of indicia of unlawfulness adverted to in the Commission's order, continuation of the suspension so as to defer the use of the rates to the end of the statutory period subserves the regulatory objective of preventing violation of the Act. There is thus not only rational meaning, but affirmative purpose in an order, of discontinuance that is addressed only to the investigation and leaves undisturbed and in continuing effect the order suspending use of the rates for a defined period. Countless examples of a similar approach (i.e. discontinuance of the proceeding coupled with a mandatory order of continuing effect) are found in the Commission's reports. *Associated Wholesale Grocers Inc.—Investigation of Practices,* 325 I.C.C. 631 (1965); *General Increases—Middle Atlantic,* 319 I.C.C. 168, 177 (1963) affirmed *sub nom. Accelerated Transport-Pony Express, Inc.* v. *United States,* 227 F. Supp. 815 (D. Vt., 1964), aff'd 379 U.S. 4.

Even if it is assumed, *arguendo,* that the Commission had conferred on its board of employees power to reverse itself by issuing an order vacating a suspension order, the facts, unmistakably clear from the chronology, are that at the times critical to the determination of this case the Board had not exercised any such power. On July 27th in the case of Rocky Mountain, and on August 7th in the case of Pacific Inland, the

carriers republished the increased rates which were under interdiction of the order of suspension. On that date (and for 20 days thereafter) *there was no order of discontinuance.* On the date the carriers presented their tariffs for filing, they were palpably in violation of the suspension order. In Rocky Mountain territory, cancellation of the suspended schedules had not even been effected. The tariffs as presented were illegal. It was the Commission's duty to reject them. These infirmities were fatal to republication of the rate increases. They were never cured, and could never be cured, by subsequent issuance of the order of discontinuance. The tariffs, illegal when filed, could not be legitimatized by subsequent entry of the order of discontinuance. That date—August 16, 1967—failed to provide the time needed for statutory compliance by tariffs, marked to take effect August 29, 1967, with the mandate of Section 217(c) of the Act requiring 30 days notice of any changes in rates. 49 USC § 317 (c).

The illegality in republication of suspended rates was timely brought to the Commission's notice by petition to reject the offending tariffs. Attention of the Court is invited to Appendix H setting forth the letter from the Acting Secretary of the Commission to counsel for the appellants. The letter is referred to by the Court below. (287 F. Supp. 129 at 131 Footnote 2; Appendix A, page 3a) The significant things in the letter are the dates. The letter is dated August 16, 1967. It refers to petition seeking rejection filed August 15, 1967. The letter dated August 16, 1967 states that: "By an order entered today, the proceeding was discontinued." On August 15th, when the petition to reject the tariffs were filed, the tariffs were undeniably illegal; the petition seeking rejection was incontro-

vertibly well founded. As the Commission itself has held, if a schedule tendered for filing is clearly unlawful in that it states rates in violation of a Commission order, no good purpose would be served by exercising powers of suspension; the schedule should be rejected. *Cancellation of Joint Fares Between District of Columbia and Nearby Virginia,* 47 MCC 205, 208 (1947). These schedules were illegally filed and improperly accepted by the Commission for its files. The Commission arbitrarily and capriciously refused to entertain the petition to reject the schedules and, as its letter states, the petition was "passed to the Commission's files without action". The district court's jurisdiction was invoked to implement Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706, which requires the reviewing court to decide all relevant questions of law and statutory provisions, to compel agency action unlawfully withheld, and hold unlawful and set aside agency action found to be arbitrary, capricious or not in accordance with law and in excess of statutory limitations and without observance of procedure required by law.

Regardless of what discretion the Commission possesses in deciding whether or not to invoke its suspension power, once the discretionary power is exercised, as it was by the July 12 suspension order, enforcement of the resulting order is not a matter for Commission discretion. The district court, preoccupied with the irrelevant doctrine of the Commission's exclusive discretion to suspend, cited *Arrow Transportation Co.* v. *Southern Ry. Co.,* 372 U.S. 658 (1963), as controlling. The question was not whether the court could supersede on review Commission discretion not to suspend

the republished rate, but whether the republished rate must be rejected as illegal because of the infraction of an outstanding suspension order. The order of suspension deferred use of the rates. The reach of this order is sufficient to condemn the republished rates which, as a publication of the identical rates, was manifestly "use" of the rates placed under suspension.

Overall, resort by carriers to the suspend-cancel-republish procedure as a means of vacating the order of suspension was an evasion of the procedure for vacating an order of suspension established by Rule 200. (Appendix E) In acquiescing in the carriers' departure from its Rules of Practice and in refusing to enforce its July 12 suspension order, there was a denial of procedural due process. *Atlantic Coast Line R.R.* v. *United States,* 173 F. Supp. 871 (E.D. Va. 1958).

The lower court's statement regarding exhaustion of statutory remedies challenges reviewability of any order, including the suspension order here in issue, entered by the Commission in an investigation and suspension proceeding. This view is flatly contradicted by cases in which parties-protestant to an investigation and suspension proceeding, who have been denied relief, obtained judicial review of the Commission's decision without having pursued or exhausted the separate complaint remedy. *Eastern Central Motor Carriers' Association* v. *United States,* 239 F. Supp. 591 (D.C. 1965); *Central and Southern Motor Freight Tariff Association* v. *United States,* 273 F. Supp. 823 (D. Del. 1967).

CONCLUSION

Appellants suggest that decisive resolution is needed of the problems created by the action of the Commission and the decision of the district court with respect to the reach, the integrity and the enforcability of orders of suspension. The question presented by this appeal are substantial. They go to the vital substance of the remedial procedure established by Section 216 (g) of the Act.

Respectfully submitted,

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January 3, 1969

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civ. A. Nos. 2358-67, 3218-67

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE, THE NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, INC., DRUG & TOILET PREPARATION TRAFFIC CONFERENCE, *Plaintiffs*,

v.

UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, *Defendants* (two cases).

July 22, 1968

OPINION

Before BURGER and McGOWAN, Circuit Judges, and MATTHEWS, District Judge.

PER CURIAM.

In each of two cases before the court the plaintiffs assert that they seek to obtain enforcement of an order of the Interstate Commerce Commission suspending and deferring the use of certain increased motor carrier rates. The plaintiffs are organizations concerned with such carrier rates. The defendants are the United States of America, the Interstate Commerce Commission, and sixteen intervenors.[1] This three-judge court was convened pursuant to 28 U.S.C. §§ 2284, 2321-2325.

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[1] The intervening defendants are: Rocky Mountain Motor Tariff Bureau, Inc., Pacific Inland Tariff Bureau, Inc., Acme Fast Freight, Inc., Arrow-Lifshultz Freight Forwarders, California Western Freight Association, Clipper Carloading Company, International Forwarding Company, Lifshultz Fast Freight, Merchant Shippers, Inc., National Carloading Corp., Republic Carloading & Distributing Co., Inc., Star Forwarders, Inc., Universal Carloading & Distributing Co., Inc., Western Carloading Co., Inc., Western Transportation Co., Inc., and Westland Forwarding Co.

To set the facts and issues in perspective a little background is necessary.

Each case originated when a motor carrier tariff bureau filed new rate schedules on behalf of its carrier members, the Bureau being Rocky Mountain Motor Tariff Bureau, Inc., in Civil Action No. 2358-67, and Pacific Inland Tariff Bureau, Inc., in Civil Action No. 3218-67. The schedules contained increases of 3% on truckload shipments and 5% on shipments of less than a truckload, and were to be effective July 15, 1967. Prior to that date, however, the Commission Board of Suspension in each case on July 12, 1967 issued an order instituting an investigation into the lawfulness of such increased rates, suspending the operation of the schedules, and providing that the use of such rates in interstate and foreign commerce be deferred through a specified date in February 1968, unless otherwise ordered by the Commission.

Shortly after the issuance of such order the motor carrier tariff bureau in each case filed new proposed tariffs republishing rate increases identical to those originally proposed, the effective date of the new proposed tariffs to be August 29, 1967 in one case and September 9, 1967 in the other. The purpose of this republishing procedure seems to have been to enable the bureaus to use more comprehensive data to justify the increased rates than had been submitted originally. Pursuant to the Commission's Special Permission No. M-94200, the original schedules containing such increased rates were cancelled by the bureaus on behalf of their respective carrier members, the effective date of such cancellation being August 4, 1967 in Civil Action No. 2358-67, and August 3, 1967 in Civil Action No. 3218-67. Thereafter on August 16, 1967 the Board of Suspension entered an order discontinuing the investigation and suspension proceedings as to the initial tariffs, the schedules containing them having been cancelled as above stated.

Following such discontinuance order, plaintiffs filed a petition for reconsideration. They alleged that in attempting to effectuate the increased rates by republication, the proponents of such rates had violated the "outstanding" suspension order of July 12, 1967 deferring the use of the same rate increases through a specified date in February 1968. The plaintiffs also moved for rejection of the republished rate increases or in the alternative that the suspension order as to the schedules originally published be amended to add the last proposed tariffs "as being subject to suspension." Division 2 of the Commission, acting as an Appellate Division, denied the petition of plaintiffs for reconsideration, and plaintiffs were notified that such action rendered moot their motion for rejection or amendment. The plaintiffs were also advised that the new schedules were "subject to protest and possible suspension based upon the record made."[2]

Upon consideration of the new record the bureaus made in justification of the schedules containing the republished rate increases, and of the protests and replies, the Commission Board of Suspension concluded in each case not to suspend the operation of such rate increases, and its action was sustained by Division 2 of the Commission acting as an Appellate Division. The plaintiffs might have filed a formal complaint with the Commission attacking the justness and reasonableness of the rates as they had a right to do under 49 U.S.C. § 316(e). Instead they filed the instant suits.

In each of the two suits plaintiffs seek to have the court enter an order directing the Interstate Commerce Commission (1) to strike from its filed and effective tariffs the schedules containing the republished increased motor car-

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[2] Letter to Messrs. Donelan, Cleary and Caldwell, from the Acting Secretary of the Commission, dated August 16, 1967, attached as Exhibit 6 to plaintiffs' complaint in Civil No. 2358-67.

rier rates; (2) to reestablish as lawful the lower motor carrier rates which were effective prior to July 14, 1967; (3) to declare unlawful and subject to restitution the rates collected under the schedules republishing the increased motor carrier rates; and (4) to enforce the order of July 12, 1967 of its Board of Suspension by proceeding with the investigation and suspension of the original schedules of increased rates, plaintiffs' theory being that such order is valid and outstanding.

The defendants oppose the granting of the requested relief on the ground that the preliminary action of the Commission of which plaintiffs complain is well within the Commission's discretion and not subject to judicial review. Moreover, the defendants maintain that the plaintiffs have not exhausted their administrative remedies, and that the present actions are premature and should be dismissed. We agree.

[1] Under the July 12, 1967 order of the Commission Board of Suspension the increased motor carrier rates were initially suspended until a specified rate in February 1968, subject, however, to the further order of the Commission. Thereafter the tariff bureaus for the carriers, with the permission of the Commission, cancelled the said rates, and following such cancellation the Commission Board of Suspension entered an order in each case discontinuing the suspension proceeding. Under these circumstances we reject as without merit the claim of plaintiffs that the suspension order of July 12, 1967 is outstanding and should be "enforced".

[2] When the tariff bureaus on behalf of the carriers republished the same rates, the Commission in a new proceeding, on the basis of a new record, declined to suspend the rates. This action was discretionary with the Commission under the Interstate Commerce Act. 49 U.S.C. § 15(7). Refusal of the Commission to suspend the rates

is not judicially reviewable. Arrow Transportation Company v. Southern Railway Co., 372 U.S. 658, 83 S.Ct. 984, 10 L.Ed.2d 52 (1963); Movers' & Warehousemen's Ass'n. v. United States, D.D.C., 227 F.Supp. 249 (1964); Carlsen v. United States, D.C. S.D.N.Y., 107 F.Supp. 398 (1952).

In the above cited Arrow case the Supreme Court held that Congress in giving the power of suspension of rates to the Commission "meant thereby to vest in the Commission the sole and exclusive power to suspend and to withdraw from the judiciary any pre-existing power to grant injunctive relief," and that the "more plausible inference is that Congress meant to foreclose a judicial power to interfere with the *timing* of rate changes which would be out of harmony with the uniformity of rate *levels* fostered by the doctrine of primary jurisdiction." (Emphasis in opinion.) 372 U.S. 658, 667, 668, 83 S.Ct. 984, 988.

[3] The Commission's decision in each of the instant cases not to suspend the rates was necessarily only a preliminary determination. By complaint before the Commission as provided in the Interstate Commerce Act, the plaintiffs might have challenged the lawfulness of the rates. 49 U.S.C. §§ 13, 15. But they failed to exhaust the statutory remedies afforded them. No final agency action subject to judicial review was obtained by the plaintiffs before they sought to invoke the jurisdiction of this court.

Accordingly as to each of the two cases before the court, the complaint is dismissed.

APPENDIX B

Service Date
July 14, 1967

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Board of Suspension, held at its office in Washington, D. C., on the 12th day of July, 1967.

INVESTIGATION AND SUSPENSION DOCKET No. M-21610
RATE INCREASES, ROCKY MOUNTAIN & TRANSCONTINENTAL TERRS.

It appearing, That there have been filed with the Interstate Commerce Commission tariff schedules setting forth new increased rates and charges, and new rules, regulations and practices affecting such rates and charges, applicable on interstate or foreign commerce, to become effective July 15, 1967, designated as follows:

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., AGENT:

MF-I.C.C. No. 98: Supplement No. 18;
MF-I.C.C. No. 117: Supplement No. 17;
MF-I.C.C. No. 124: Supplement No. 4;
MF-I.C.C. No. 128: Supplement No. 9;
MF-I.C.C. No. 142: Supplement No. 2;
MF-I.C.C. No. 145: Supplement No. 8;
MF-I.C.C. No. 147: Supplement No. 2;
MF-I.C.C. No. 149: Supplement No. 2;
MF-I.C.C. No. 151: Supplement No. 7;
MF-I.C.C. No. 153: Supplement No. 2;
MF-I.C.C. No. 155: Supplement No. 45;
MF-I.C.C. No. 157: Supplement No. 6;
MF-I.C.C. No. 160: Supplement No. 1;

MF-I.C.C. No. 161: Supplement No. 5;
MF-I.C.C. No. 163: Supplement No. 1;
MF-I.C.C. No. 165: Supplement No. 2;
MF-I.C.C. No. 167: Supplement No. 6;
MF-I.C.C. No. 170: Supplement No. 1;
MF-I.C.C. No. 171: Supplement No. 1;
MF-I.C.C. No. 172;

And it further appearing, That upon consideration of the said schedules and protests thereto there is reason to believe that they would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable in violation of the Interstate Commerce Act;

and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rates, charges and regulations contained in said schedules, with a view to making such findings and orders in the premise as the facts and circumstances shall warrant. In the event the said schedules are changed, amended or reissued upon termination of the suspension period and the investigation having not been concluded, such changed, amended or reissued schedules will be included in this investigation.

It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including February 14, 1968, unless otherwise ordered by this Commission.

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this in-

vestigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be served upon the carriers parties to the said schedules and that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Board of Suspension.

H. NEIL GARSON,
Secretary

(SEAL)

APPENDIX C

Service Date
August 22, 1967

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Board of Suspension, held at its office in Washington, D. C., on the 16th day of August, 1967.

DISCONTINUING MOTOR CARRIER INVESTIGATION AND SUSPENSION PROCEEDINGS

I. & S. No. M-21610

RATE INCREASES, ROCKY MOUNTAIN & TRANSCONTINENTAL TERRS.

I. & S. No. M-21610 (Sub No. 1)

RATE INCREASES, EAST MIDWEST & ROCKY MOUNTAIN POINTS

I. & S. No. M-21611

INCREASED RATES AND CHARGES, PACIFIC INLAND TERRITORY

I. & S. No. M-21612

INCREASED RATES, ARIZ., CALIF., N. MEX., NEV., ORE., TEXAS

I. & S. No. M-21612 (Sub No. 1)

INCREASED RATES, POINTS IN ARIZONA, NEW MEXICO & TEXAS

It appearing, That by orders in the above-entitled proceedings, the Commission, Board of Suspension, entered into investigations concerning the lawfulness of classifications, rates, charges, regulations or practices stated in the schedules designated in the said order, and suspended the

operation of the said schedules to the dates specified in the said orders;

It further appearing, That the respondents under special permission filed schedules cancelling the schedules under suspension in the said proceedings:

It is ordered, That these proceedings be, and they are hereby, discontinued.

By the Commission, Board of Suspension.

H. NEIL GARSON,
Secretary

(SEAL)

APPENDIX D

Section 216(g) of the Interstate Commerce Act. 49 USCA § 316(g)

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such sched-

ule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or pracitce goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided,* That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

APPENDIX E

INTERSTATE COMMERCE COMMISSION SPECIAL RULES OF PRACTICE

Rule 200 (49 C.F.R. 1100.200)

Special Rules of Practice governing procedure in certain suspension and fourth-section matters

(a) The proceedings of the Board of Suspension and the Fourth-Section Board shall be informal. . . .

(b) Petitions for reconsideration of orders of the following may be filed by any interested person within 20 days after the date of the service of the order: (1) Board of Suspension . . . (4) Division 2 suspending schedules . . . except as to said subparagraph (4) of this paragraph respecting which an original and 14 copies are required, the original and 6 copies of any pleading, document or paper filed under this section shall be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission, but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the Commission's general rules of practice.

APPENDIX F

ORGANIZATION MINUTES [1]

Assignments to Boards

7.1 The following portions of the work, business, and functions of the Commission are assigned to Boards of employees. Such portions relate to proceedings or classes of proceedings that do not involve issues of general transportation importance. The right to apply to the Commission for rehearing, reargument or reconsideration of a decision, order or requirement of an appellate division upon a petition filed by a party to the original order, action or requirement of any such board is restricted under the authority granted by section 17(6) of the Interstate Commerce Act as herein provided.

. . .

7.3 *Board of Suspension:*

Section 15(7), 216(g), 218(c), 307(g) and (i), and 406(e), relating to the initial disposition (1) by declining to suspend or (2) by entering an order of investigation or (3) by entering an order of investigation and suspension, either on its own motion or on petitions or requests for suspension of schedules and tariffs, and relating to authority to institute investigations into rates, fares, charges, and practices of carriers under Parts I, II, III, and IV, as ancillary to such investigations or such investigation and suspension proceedings; and the authority, prior to submission of evidence, to enter orders discontinuing any proceeding when the schedules or tariffs under which the proceeding arose have been cancelled. This delegation of authority shall not include: (1) petitions or requests relating to schedules or tariffs filed in purported compliance with any decision or order of the

[1] 30 F.R. 11189, 12559 and 13302; 31 F.R. 242, 4762, 9529, 12693,

Commission or a division thereof, or (2) any action in connection with suspensions to be taken during or after formal hearings or investigations. The Board may certify to Division 2 any matter which, in its judgment, should be passed upon by that division or the Commission.

. . .

Item 7.9 *Special Permission Board:*

Special permissions or other permissible waivers of rules regarding schedules of rates, etc. under section 6(3), 217(c), 218(a), 306(d), 306(e) and 405(d), including authorization for the cancellation of suspended tariffs or schedules, which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits. The Board may certify to Division 2 any matter which, in the Board's judgment, should be passed upon by that division, and Division 2 may recall any matter from the Special Permission Board.

APPENDIX G

SPECIAL PERMISSION NO. M-94200
(Revised May 10, 1967)

CANCELS

SPECIAL PERMISSION NO. M-94200
(Issued May 3, 1955, as amended)

CANCELLATION OF TARIFF MATTER UNDER SUSPENSION

At a Session of the INTERSTATE COMMERCE COMMISSION, Special Permission Board, held at its office in Washington, D. C., on the 10th day of May, 1967.

Upon further consideration of the matters and things involved, Special Permission No. M-94200 of May 3, 1955, and Amendments 1 through 10 thereto, issued to National Motor Freight Traffic Association, Inc., Agent;

IT IS ORDERED, That Special Permission No. M-94200, be, and it is hereby, revised, for the purpose of reflecting changes in Paragraph one (1) thereof, as amended, regarding notification being made concurrently upon such cancellation of suspended matter, also for the purpose of bringing forward into this revised order all presently applicable provisions, as follows:

1. All common carriers of property by motor vehicle in interstate or foreign commerce and their duly appointed agents are hereby authorized to issue, post and file supplements (to bound tariffs) or revised pages (to loose-leaf tariffs) to their respective tariff or tariffs, such supplements or pages to provide for the cancellation of matter under suspension or suspended matter which is under postponement, and to be made effective prior to the date to which suspended or postponed (whichever is later) and upon not less than ten days' notice;

Provided that the carrier or its duly appointed agent shall concurrently with the filing of such cancellation notify, (1) all parties of record in the said proceeding, and (2) the Office of Proceedings, Interstate Commerce Commission, Washington, D. C., 20423, by telegram or letter, giving reference by I. & S. Docket Number and by MF-ICC Number to the tariff, supplement or revised page effecting the cancellation and the effective date thereof, except as provided below:

. . .

8. This permission does not, except as expressly indicated, waive or modify any outstanding formal order of the Commission, any of the requirements of its published rules relative to the construction and filing of tariffs, or any of the provisions of the Interstate Commerce Act, nor does it authorize the filing of any publications other than those referred to herein. This permission shall continue in force and effect to and including July 1, 1970.

By the Commission, Special Permission Board.

(SEAL)

H. NEIL GARSON
Secretary

To: National Motor Freight Traffic Association, Inc., Agent
Bryce Rea, Secretary
ATA Building, 1616 P Street, N. W.
Washington, D. C. 20036

ETS:lmd

APPENDIX H

INTERSTATE COMMERCE COMMISSION
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20423

August 16, 1967

Messrs. John F. Donelan, John M. Cleary
and John H. Caldwell
The National Industrial-Traffic League
914 Washington Building
Washington, D. C. 20005

Gentlemen:

This has reference to your petition of August 15, 1967, seeking rejection of various supplements and tariff MF-I.C.C. No. 173 published by Rocky Mountain Motor Tariff Bureau, Inc., Agent, to become effective August 29, 1967, or in the alternative, amendment of the suspension order in Investigation and Suspension Docket No. M-21610 to include such supplements and tariff.

The schedules suspended by the order in the proceeding referred to, as you know, were canceled effective August 4, 1967, under an outstanding special permission, and by an order entered today, the proceeding was discontinued. Your petition will accordingly be passed to the Commission's files without action.

The schedules to which you refer, published to become effective August 29, 1967, are, of course, subject to protest and possible suspension based upon the record made.

Sincerely yours,

ANDREW ANTHONY, JR.
Andrew Anthony, Jr.
Acting Secretary

cc: Mr. Everett C. Funk, General Manager
Rocky Mountain Motor Tariff Bureau, Inc.
P. O. Box 5746, Terminal Annex
Denver, Colorado 80217